

REMARKS

The above Amendments and these Remarks are in reply to the Office Action mailed August 23, 2007.

Currently, claims 21-32 and 34-44 are pending. Applicants respectfully request reconsideration of claims 21-32 and 34-44.

I. Rejection of Claims 21-28, 30-32, 34-39, and 42-44 under 35 U.S.C. §102(e)

Claims 21-28, 30-32, 34-39, and 42-44 have been rejected under 35 U.S.C. §102(e) as being anticipated by Rashkovskiy (WO 01/50739 A1). Applicants respectfully assert that Rashkovskiy is not a proper prior art reference under 35 U.S.C. §102(e) because the international application does not designate the United States.

MPEP 1857.01 states:

An international application may be used as prior art as of its international filing date, or an earlier U.S. filing date for which benefit is properly claimed, under 35 U.S.C. 102(e) if the international application:

- (A) was filed on or after November 29, 2000;
- (B) designated the United States; and
- (C) was published under PCT Article 21(2) in the English language.

...In addition, international applications, which... did not designate the U.S.... may not be used to reach back (bridge) to an earlier filing date through a benefit claim for prior art purposes under 35 U.S.C. 102(e).

Rashkovskiy does not designate the United States. Therefore, the international application is not a proper prior art reference under 35 U.S.C. §102(e). Applicants respectfully request reconsideration of claims 21-28, 30-32, 34-39, and 42-44 for at least these reasons.

II. Rejection of Claim 29 under 35 U.S.C. §103(a)

Claim 29 has been rejected under 35 U.S.C. §103(a) as being obvious over Rashkovskiy in view of Kim (U.S. 6,618,057). Applicants respectfully assert that claim 29 is not obvious over

Rashkovskiy in view of Kim because Rashkovskiy is not a proper prior art reference under 35 U.S.C. §102(e), as discussed above. Reconsideration of claim 29 is respectfully requested.

III. Rejection of Claims 40 and 41 under 35 U.S.C. §103(a)

Claims 40 and 41 have been rejected under 35 U.S.C. §103(a) as being obvious over Rashkovskiy in view of Lefebvre (U.S. 2002/0046299). Applicants respectfully assert that claims 40 and 41 are not obvious over Rashkovskiy in view of Lefebvre because Rashkovskiy is not a proper prior art reference under 35 U.S.C. §102(e), as discussed above. Reconsideration of claims 40 and 41 is respectfully requested.

Applicant asserts that claims 21-32 and 34-44 are in condition for allowance. Based on the above amendments and these remarks, reconsideration of claims 21-32 and 34-44 is respectfully requested.

The Examiner's prompt attention to this matter is greatly appreciated. Should further questions remain, the Examiner is invited to contact the undersigned practitioner by telephone.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 501826 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

Date: October 18, 2007

By: /Michelle Esteban/
Michelle Esteban
Reg. No. 59,880

VIERRA MAGEN MARCUS & DENIRO LLP
575 Market Street, Suite 2500
San Francisco, California 94105-4206
Telephone: (415) 369-9660
Facsimile: (415) 369-9665